



U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

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For Immediate Release

Tuesday, Aug. 5, 2003

Grassley Expresses Concern Over Health Care Contracting Incident

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, has expressed concern over a General Accounting Office report showing that the Centers for Medicare and Medicaid Services administrator “improperly intervened to exclude” a subcontractor from government work. Grassley expressed concern over this incident in a letter to Health and Human Services Secretary Tommy Thompson. The text of Grassley’s letter follows.

August 4, 2003

VIA FACSIMILE: (202) 690-7380

ORIGINAL BY U.S. MAIL

The Honorable Tommy G. Thompson
Secretary
Department of Health & Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Thompson:

Last year allegations were brought to my attention that the Centers for Medicare & Medicaid Services (CMS) had inappropriately directed the RAND Corporation (RAND) not to retain the University of Wisconsin’s Center for Health Systems Research & Analysis (Center) as a subcontractor in retaliation for technical concerns raised about another CMS initiative by the Center’s Director, Dr. David Zimmerman. Today the General Accounting Office (GAO) reported to me that in fact CMS Administrator Tom Scully, “improperly intervened to exclude the Center.” Specifically, the GAO reported:

The Administrator’s action was not supported by any reasonable basis, including a reasonable exercise of authority under the subcontract consent clause contained in the

master contract. Rather, the action appears to have been taken in retaliation for the Center Director's technical concerns about another CMS initiative. The Administrator's action thus was improper and undermined the integrity of the procurement process at CMS. Moreover, the Administrator's exclusion of the Center was understood by senior CMS officials to extend to other CMS procurements in which the Center might play a role as a prime contractor or subcontractor.

Simply put, Mr. Scully's actions are unacceptable. America's taxpayers and Medicare beneficiaries expect that the government is working toward continually improving the quality of healthcare. Contractors and subcontractors who work with the government toward that goal rely upon federal laws and regulations designed to ensure that procurements are conducted fairly. Action by a high-level government official to unfairly deny a contract or the opportunity to compete for a contract is an intolerable threat to the integrity of the procurement process.

Although CMS asserted that Mr. Scully had a reasonable basis to instruct RAND not to subcontract with the Center, the GAO did not find evidence to support CMS's assertion. In any event, Mr. Scully's actions have jeopardized the integrity of CMS's procurement process and have threatened the free and frank exchange of views by contractors. Based on my experience, I know Mr. Scully values free and frank discussion and, consequently, should recognize that his actions were simply inappropriate.

The GAO's report recommends that you take immediate action to remedy this situation and that you review all CMS procurement decisions affecting the Center since September 2002 to ensure that they were supported by a reasonable basis. Please advise me about any action you have taken or will take to fully address the GAO's findings and recommendations. It is critical to restore the integrity of CMS's procurement process and in the future avoid even the appearance of impropriety.

Thank you for your attention to these important matters and for your response by August 15, 2003. Please do not hesitate to contact me if you have any concerns.

Sincerely,

Charles E. Grassley
Chairman